IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 22ND NOVEMBER 2006 / 1ST AGRAHAYANA 1928

Crl.MC.No. 3805 of 2005(A)

CC.184/2005 of CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA

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PETITIONER:

SREE NARAYANA TRADERS AND FINANCIERS
LIMITED, REPRESENTED BY THE MANAGING DIRECTOR,
M.K.DIVAKARAN, PATHANAMTHITTA.

BY ADV. SRI.C.S.MANILAL

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. BIJU.K.BALU, KOZHIKUNNATHU HOUSE,
THAZHAM MURI, MALAYALAPPUZHA, PATHANAMTHITTA.

BY ADV. SRI.N.K.THANKACHAN
PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 22/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3805 of 2005

Dated this the 22nd day of November 2006

O R D E R

The petitioner is the complainant in a prosecution under Section 138 of the Negotiable Instruments Act. While that complaint was pending, the accused in the 138 prosecution, the second respondent herein (hereinafter referred to as the complainant) had filed a complaint against the managing director, manager and an employee of the petitioner herein, a company, alleging commission of the offences punishable under Section 120B, 420, 465 and 468 read with 34 I.P.C. The crux of the allegations in the private complaint is that the accused persons entered into criminal conspiracy and forged certain documents including the cheque in question on the basis of which the 138 prosecution was initiated to stake false and untenable claims against the complainant. The petitioner has come to this court with the prayer that the prosecution launched against its managing director, manager and employee may be quashed.

2. A symbiotic resume of the events which led to the complaint in question appears to be relevant and necessary for a proper understanding of the dispute between the parties. On 05/07/2003, according to the petitioner, an amount of Rs.7,50,000/- was advanced to the complainant as loan. Annexure A1 allegedly bears testimony of this transaction. In discharge of the said liability,

the cheque in question (in respect of which the prosecution under Section 138 of the N.I.Act is initiated by the petitioner) was allegedly issued by the respondent/complainant. The said cheque was dishonoured on 29/08/2003. Intimation of dishonour was received on 06/09/2003. Notice of demand under Section 138 of the N.I.Act dated 16/09/2003 was thereupon issued to the complainant herein. That notice was received by the complainant herein on 18/09/2003. Though that notice was duly received and acknowledged, there was no response. It is, in these circumstances, that the complaint was filed under Section 138 of the N.I.Act by the petitioner herein on 23/10/2003. The complainant herein appeared before the learned Magistrate as accused in the said prosecution under Section 138 of the N.I.Act. He did not raise any allegations against the petitioner or his employees for a long period of time after entering appearance also. Long later, a private complaint was filed (copy of which is produced as Annexure 8) before the learned Magistrate. The learned Magistrate, referred the said complaint to the police under Section 156(3) Cr.P.C. F.I.R was registered on 23/09/2004. After completing investigation, final report was filed by the police, copy of which is produced as Annexure 10. The police came to the conclusion that the allegations raised are false and the case was hence referred. It is thereafter that the complainant lodged a fresh protest complaint

before the learned Magistrate. A copy of that complaint is produced as Annexure 11. Cognizance was taken on the basis of Annexure 11. The managing director, manager and the employee of the petitioner have entered appearance as accused 1 to 3 in that prosecution before the learned Chief Judicial Magistrate, Pathanamthitta which is pending as C.C.No.184 of 2005.

3. The learned counsel for the petitioner contends that the complainant has resorted to the criminal adjudicatory process with transparent mala fides and with vexatious intent. The complaint filed against the accused in C.C.No.184/2005 is nothing but an abuse of the process of the court. The sequence of events must convincingly and eloquently convey to the court that there is absolutely no bona fides in the complaint and the complaint leads to miscarriage of justice. The learned counsel for the petitioner relies on the decision in Sunil Kumar vs M/s.Escort Yamaha Motors Ltd. [AIR 2000 27] in support of his contention that where the filing of the complaint is actuated by transparent malafides and by want of bona fides, this court must in the interests of justice invoke the powers under Section 482 Cr.P.C.

4. The respondent has entered appearance. The counsel contends that the complaint is not actuated by any malafides and that the complaint is lodged bonafide for the redressal of his genuine grievances. In these circumstances, it is prayed that premature

termination of the private complaint by invocation of the powers under Section 482 Cr.P.C may not be resorted to.

5. The powers under Section 482 Cr.P.C are very wide and sweeping. The width and amplitude of such power must instill in the mind of the court the need to be careful and cautious. But where the court is satisfied that there has been malafide resort to the criminal adjudicatory process by a complainant, the court should not hesitate and must invoke its powers under Section 482 Cr.P.C to spare the indictees of the undeserved trauma of a criminal prosecution.

6. The petition really suffers from a vital procedural defect in that it is not the accused persons who have come before this court with this Crl.M.C. The indictees are the employees of the petitioner, a company. In the facts and circumstances of this case, I do not attach any significance to that procedural inadequacy and I am proceeding to consider the prayer of the petitioner for quashing the proceedings as one made on behalf of its employees.

7. It is, first of all, vital to note that the transaction on 05/07/2003 is not disputed. Both sides assert that there was a transaction on 05/07/2003. While the petitioner asserts that the petitioner had advanced an amount of Rs.7,50,000/-, the complainant herein contends that that was not a transaction between him and the petitioner but it was really a transaction between one Dileep Kumar

and the petitioner. According to the complainant, though relevant documents were signed, executed and handed over, no amount whatsoever was paid to the said Dileep Kumar or to the complainant. Inherently and on broad probabilities, this assertion cannot be swallowed meekly by a prudent mind. Even thereafter, the complainant did not admittedly raise his little finger against the petitioner or the officials of the petitioner. The cheque was dishonoured and notice of such dishonour was received by the complainant on 18/09/2003. Even on receipt of that notice, the complainant did not react at all. No reply was given to the notice. Except the convenient, specious and self-serving assertion that the complainant met the petitioner and its officials and discussed the matter after receipt of the notice, there is no other circumstance to indicate the acceptability of that assertion. Admittedly, after the complaint under Section 138 of the N.I.Act was filed on 22/10/2003, the complainant herein had entered appearance as accused in that prosecution. But till 15/09/2004, the present allegations were never raised by the complainant against the officials of the petitioner company. Investigation was conducted on Annexure 8 complaint by the police and the final report submitted by the police show that the allegations raised are false. It is thereafter that the present protest complaint dated 13/09/2005 was filed.

8. It does not require the wisdom of Solomon to perceive that the present complaint is nothing but a blatant retaliation against the petitioner herein for having initiated the prosecution under Section 138 of the N.I.Act. The sequence of events starting from the admitted transaction of 05/07/2003 and the conduct of the petitioner on receipt of the notice of demand and also after the commencement of the prosecution under Section 138 of the N.I.Act must eloquently convey that the complaint is without any bonafide whatsoever and has been resorted to with the transparent intention of making a counter move in order to pressurise the petitioner to accept the term of the complaint. The prosecution initiated under Section 138 of the N.I.Act, after due contest, has now ended in conviction of the complainant herein also. In these circumstances, I agree with the learned counsel for the petitioner that the prosecution launched against the officials of the petitioner in C.C.No.184/2005 before the C.J.M.Pathanamthitta deserves to be quashed in its entirety.

In the result, this Crl.M.C is allowed. C.C.No.184/2005 against all the accused is hereby quashed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006